

**TOWN OF FABIUS
LOCAL LAW NO. 1 OF 2013**

**A LOCAL LAW IMPOSING A SEVEN MONTH MORATORIUM ON ALL ACTIVITIES
RELATED TO THE EXPLORATION FOR, AND THE PRODUCTION OR STORAGE
OF NATURAL GAS AND/OR PETROLEUM IN THE TOWN OF FABIUS**

Be it enacted by the Town Board of the Town of Fabius as follows:

Section 1. TITLE

**THIS LAW WILL BE KNOWN AS LOCAL LAW #1 OF THE YEAR 2013, A
LOCAL LAW IMPOSING A SEVEN MONTH MORATORIUM ON ALL ACTIVITIES
RELATED TO THE EXPLORATION FOR, AND THE PRODUCTION OR STORAGE
OF NATURAL GAS AND/OR PETROLEUM IN THE TOWN OF FABIUS.**

Section 2. LOCAL LAW #2 OF THE YEAR 2012

This local law supersedes and replaces Local Law #2 of the year 2012 in its entirety.

Section 3. LEGISLATIVE INTENT AND FINDINGS

A. The Town Board of the Town of Fabius, Onondaga County, State of New York is vested by the State of New York to regulate and control land use within the Town of Fabius and this law is being enacted pursuant to said powers.

B. On May 31, 2012 the Town of Fabius enacted Local Law #2 of the year 2012 imposing a second moratorium as set forth therein, on the practice commonly known as hydraulic fracturing or hydrofracking. The effective date was 6/5/12. Said moratorium ran for a period of 365 days. The Local Law also allowed the Town Board by resolution to extend the moratorium for an additional 180 days.

Prior to enacting Local Law #2 of the year 2012 and in 2011, the Town Board of the Town of Fabius enacted Local Law #1 of the year 2011 imposing a 9-month moratorium on hydraulic fracturing or hydrofracking. That Local Law also allowed for the moratorium to be extended for 180 days, which the Town duly enacted. At the expiration of that Local Law, that is Local Law #1 of the year 2011, the aforementioned Local Law #2 of the year 2012 was enacted.

C. As set forth in both moratoriums, the Town Board is aware of the controversy and concerns regarding the practice commonly known as hydrofracking or hydraulic fracturing. The Town established a committee in 2012 to advise the Town as to the possible impact of this procedure. Also, the Town attorneys and the Town Supervisor and Board members have attended numerous meetings, conferences and other events

to gain knowledge of this procedure and its possible effects on the Town and also on the Master Plan previously enacted by the Board to guide future development in the Town. Also, representatives of various parties interested in hydrofracking, both pro and con, have made presentations to the Town Board and also the town has reviewed films on the subject, visited sites in Pennsylvania where hydrofracking is occurring and the town attorney has attended a number of seminars on the subject.

The Town is also aware of three recent local court decisions that addressed the issue of hydrofracking and the ability of the Town to regulate same, especially concerning the doctrine of preemption. Also the town recently became aware of the decision in the Appellate Division Third Department upholding the authority of the town to ban the practice which is the subject of this moratorium.

A decision in the case of Vestal Gas Coalition, et al v. the City Council, City of Binghamton, 37 Misc. 3d, 1204 called into question a moratorium enacted pursuant to a town's police powers as opposed to a local law based on zoning authority and land zoning authority.

The Town has also been monitoring the actions of New York State in addressing this issue and the concerns raised on the State level both by the Governor's office and the Department of Environmental Conservation. Recent newspaper articles have been written about the potential impact of hydrofracking and also the possible detrimental effects on land use in areas where it has been allowed.

This moratorium is intended to allow necessary time for the Town Board to further review whether additional local regulations are necessary. The Town Board needs more time to determine the appropriate rules and regulations to insure a comprehensive uniformity, fairness and consistency in such regulations, if it is deemed necessary to enact restrictions and/or a ban on the practice of hydrofracking. The Town has been examining various proposed local laws to address this issue and is reviewing same.

D. The Town is also concerned with the potential for damage to groundwater quality and quantity, potential for sediment and erosion and the use of naturally occurring radioactive materials. Hydrofracking requires the use of large amounts of water, including the use of surface water (rivers, basins, lakes), private ponds, groundwater, municipal water, waste water and produced water. Further, the use of hydrofracking will create more demand for commercial waste water treatment facilities to dispose of produced water. The Town Board is concerned with the potential for groundwater pollution, affecting many water wells in the Town. There may also be further impacts to local roads during the construction and use of any potential well. All of these concerns are in addition to the goals of the Comprehensive Plan to maintain and protect the rural character of this Town.

E. The Town of Fabius has legitimate goals and aims to protect the community, cultural, historical, recreational and environmental resources with the Town and the Town Board believes that studying this issue is necessary so that hydrofracking operations are regulated to protect the Town's predominant residential and agricultural land uses and to protect the environment from potential negative impacts.

This Local Law has been referred pursuant to General Municipal Law §239 to the Onondaga County Planning Agency.

{The subject matter of this Local Law has been determined to be an Unlisted or Type II Action pursuant to the State Environmental Quality Review Act; accordingly, and assuming arguendo the former may be the case, the Town Board has elected to act as Lead Agency, conducted an Uncoordinated Review and by resolution duly adopted has issued a Negative Declaration of Significance.}

Section Four. (4) Definitions.

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

Agriculture Use – Land use for the production of crops and/or livestock and livestock products (as those terms are defined at Section 301 of the New York State Agriculture and Markets Law).

Below-Regulatory Concern – Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

Gathering Line Or Production Line – Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

Injection Well – A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and fewer than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.

Land Application Facility – A site where any Natural Gas Exploration and/or Petroleum Production Wastes are applied to the soil surface or injected into the upper layer of the soil.

Natural Gas - Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas and/or Petroleum Exploration Activities – Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, *but only to the extent* that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

Natural Gas and/or Petroleum Extraction Activities – The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes – Any of the following in any form, and *whether or not* such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of “industrial waste”, “hazardous”, or “toxic”, and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. §261.4(b). The definition of Natural Gas and/or Petroleum Extraction,

Exploration or Production Wastes *does not include* (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Agriculture Use.

Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes

Disposal/Storage Facility – Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes

Dump – Land upon which Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

Natural Gas and/or Petroleum Support Activities - Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Disposal Storage Facility; (d) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Dump; (e) Land Application Facility; (f) Non-Regulated Pipelines; (g) Underground Injection; or (h) Underground Natural Gas Storage.

Natural Gas Compression Facility – Those facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

Natural Gas Processing Facility – Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

Non-Regulated Pipelines – Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

Person – Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Pipeline – All parts of those physical facilities through which petroleum, gas, hazardous liquids or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), whether or not laid in public or private easement or private right of way within the Town. This includes, without limitation, gathering lines, production lines, and transmission lines.

Radioactive Material – Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is “radioactive material” for purposes hereof, *whether or not* it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

Radiation – The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

Subsurface – Below the surface of the earth, or of a body of water, as the context may require.

Town – The Town of Fabius, Onondaga County, New York.

Transmission Line – A pipeline that transports oil, gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, or (b) as a “Major utility transmission facility” under the Public Service Law of New York, Article 7, §120(2)(b).

Underground Injection – Subsurface emplacement of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes by or into an Injection Well.

Underground Natural Gas Storage – Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.

Section Five (5). Moratorium and Prohibitions

A. During the effective period of this local law, and subject to the provisions of §8 hereof:

1. From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, operating

- permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities.
2. From and after the date of this Local Law, no Person shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town for any of the following: i) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities.
 3. The prohibitions are not intended, and shall not be construed, to: (i) prevent or prohibit the transmission of natural gas through utility pipes, lines, or related appurtenances for the limited purpose of supplying natural gas utility services to residents of or buildings located in the Town; or (ii) prevent or prohibit the incidental or normal sale, storage or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Agriculture, residential, business, commercial, and other uses within the Town, *so long as* such uses do not involve any Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, or Natural Gas and/or Petroleum Support Activities.
 4. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is one seven months after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.
 5. This moratorium and prohibition shall apply to all real property within the Town.
 6. Under no circumstances shall the failure of the Town Board of the Town, the Zoning Board of Appeals of the Town, the Planning Board of the Town, or the Code Enforcement Officer for the Town to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

Section Six (6). Term.

The moratorium imposed by this Local Law shall be in effect for a period of seven months from the effective date of this Law.

Section Seven (7). Penalties.

Any person, firm, corporation or other entity including those authorizing or directing or acting under or at the direction of same, and that shall take any action whatsoever to or toward establishment, implementation, placement, construction or installation of the processes, methods and/or practices defined herein as the Processes, Hydraulic Fracturing and/or Hydrofracking, in violation of the provisions of this Local Law shall be guilty of a misdemeanor offense; such person in violation hereof or who shall otherwise violate any of the provisions of the Fabius Town Code shall also be subject to:

A. Such penalties as may otherwise be provided by applicable local law, ordinances, rules or regulations of the Town of Fabius for violations.

B. Injunctive relief in favor of the Town of Fabius to cease any and all such actions which violate with this Local Law and/or other provisions of the Town of Fabius Code and, if necessary, to restore and/or remove any installation, construction or reconstruction (including the restoration of excavated lands) that may have taken place in violation of this Local Law or Town Code and/or to otherwise effect the restoration of premises affected thereby to its condition prior to such actions.

Section Eight (8). Severability/Validity.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstances is adjudged or determined to be invalid or unconstitutional by any court or other governmental agency of competent jurisdiction, such determination, order or judgment shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application directly involved in the controversy in which such determination, order or judgment shall have been rendered and shall not affect nor impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances. Further, in adjudging such invalid provision, the court or governmental agency shall modify same to a provision which is legally binding and enforceable, and accordingly, not invalid or unconstitutional, and which best achieves the intent of the invalid or unconstitutional provision, or part thereof, as expressed or inferred herein.

Section Nine (9). Effective Date.

This Local Law shall take effect immediately upon its filing in the office of the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as Local Law No. 1 of 2013 of the (County)(City)(Village)(Town) of Fabius was duly passed by the Town Board of the Town of Fabius on 5-20-2013 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective _____ Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19__ of the (County)(City)(Village)(Village) of _____ was duly passed by the _____ on _____, 19__, and was (approved)(not approved)(repassed _____ (Name of legislative Body)

disapproval) by the _____ and was deemed duly adopted on _____, 19__ (Elective Chief Executive Officer*)

in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. 199_ of the (County)(City)(Village)(Village) of _____ was duly passed by the _____ on _____, 19__, and was (approved)(not approved)(repassed after

____ 19__.

to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on _____ 19__, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19__ of the (County)(City)(Village)(Village) of _____ was duly passed by the _____ on _____ 19__, and was (approved)(not approved)(repassed after _____ (Name of Legislative Body)

disapproval) by the _____ on _____ 19__ Such local law was subject to

~~(Elective Chief Executive Officer*)~~

~~permissive referendum and no valid petition requesting such referendum was filed as of _____ 19__ , in accordance with the applicable provisions of law.~~

~~5. (City local law concerning Charter revision proposed by petition.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No- _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 19__ , became operative.~~

~~6. (County local law concerning adoption of Charter.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No- _____ of 19__ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 19__ , pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the Villages of said county considered as a unit voting at said general election, became operative.~~

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph one (1) above.

Margaret Riker, Town Clerk

(Seal)

Date: _____, 2013

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF ONONDAGA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature

Attorney for the Town

Title

County

City of Fabius

VillageTown

Date: _____, 2013

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a countywide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a Village where such officer is vested with the power to approve or veto local laws or ordinances.